IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

Farookh Chisty

Vs.
State

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S.B. CRIMINAL REVISION PETITION NO.715/2004

u/S. 397 Cr.P.C.

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Date of Order:- _____September, 2006.

P R E S E N T

HON'BLE MR.JUSTICE HARBANS LAL

Mr. Sudesh Bansal on behalf of
Mr. I.S. Sodhi for the petitioner.
Mr. Arun Sharma P.P. for the State.

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BY THE COURT:-

This revision petition under Section 397 Cr.P.C. is directed against the order dated 7/7/2004 vide which the learned Additional District and Sessions Judge (Fast Track) Ajmer has disallowed the application for summoning the defence witnesses mentioned in the list filed on 2/6/1997 in the Sessions Case arising out of F.I.R. No.117/92 P.S. Ganj, Ajmer for offences under Sections 376, 376(2), 377, 201, 366, 365, 341, 342, 114 and 120-B I.P.C.

2) The relevant facts are that F.I.R. No.117/92 came to be lodged at P.S. Ganj, Ajmer initially for offences under Sections 292, 292-A, 327, 354, 384, 500

and 509 I.P.C. on 30/3/1992 on the basis of secret enquiry made by Shri Hari Prasad Sharnia, Circle Officer North Ajmer who found that some girls were being blackmailed on the basis of their indecent and nude photographs taken with Naseem, Parveq, Kailash Soni, Sohel, and Salim. It was also found that one Ishrat along with others was sexually exploiting these girls. After thorough investigation a charge-sheet No.140/92 was filed against some of the accused persons. Thereafter, other Charge-sheet Nos.140/92A, 140/92B, 140/92C, 140/92D and 140/92E came to be filed in this case against the accused persons. The cases were committed to the court of learned District and Sessions Judge, Ajmer which were tried together as Sessions Case No.110/92 in which some of the accused persons were found guilty, convicted and sentenced whereas others were acquitted. The appeals filed on either side were also decided by the High Court and the S.L.Ps. filed before the Hon’ble Apex Court have also been decided.

3) At the time of trial of the said case the petitioner was found to be suffering from acute schizophrenia. As such, his case was separated in view of the provisions of Section 330 Cr.P.C. So, he is being tried now. During the course of trial of the aforesaid sessions case, an application was moved by and on behalf of the petitioner on 2/6/1997 with the prayer to summon 27 persons named therein as defence witnesses which, after hearing learned counsel for the parties and on the basis of the materials on record was disallowed on 7/7/2004 which order is under challenge in this revision

petition inter-alia on the ground that the trial court has failed to appreciate the spirit of Section 233(1) and (3) of Cr.P.C. The trial court while disallowing the application of the accused petitioner has also not stated that the application has been filed for the purpose of vexation or delay or for defeating the ends of justice. It has not given any reason for not summoning even the witnesses who are not related to the newspapers.

3) Learned counsel for the petitioner has contended that the order impugned being against the provisions of the Code of Criminal Procedure, 1973 is erroneous and illegal and deserves to be set-aside. It is also submitted that the observation of the learned court below that the evidence of these witnesses is not material tantamounts to pre-judging the evidence of the defence witnesses which could not be done prior to their examination. According to him, the requisite certificate under Rule 20 of the General Rules (Criminal) has been appended to the list of witnesses. Therefore, the defence witnesses as mentioned in the list ought to have been summoned for the purpose of fair trial of the case.

4) Learned Public Prosecutor has vehemently opposed the prayer and has supported the impugned-order. He has submitted that neither the evidence of these witnesses is relevant nor essential for the just decision of the case.

5) I have carefully considered the respective submissions made at the bar and have also perused the impugned-order as well as the relevant record.

6) It may be stated at the outset that no formal application for summoning the witnesses has been made but list of defence witnesses has been filed and it has been mentioned therein that the accused being under mental disorder, a further complete list of defence witnesses shall be submitted after he is fully cured. It has been prayed in the list itself that these witnesses may be summoned. It is neither indicated in the said list nor pointed out at the time of submissions made before this Court as to what is the defence of the petitioner which he wants to prove by these 27 witnesses.

7) Out of the aforesaid list of 27 witnesses, 7 witnesses namely; Alok Tyagi, C.P. Gothwal, Dr. B.K. Vyas, Ashiq Mohd., Usman Chisty, Dr.Deepak Bhatia and Anwar Chisty pertain to the mental condition and behaviour of the petitioner during the period he was facing trial along with others. It is not disputed that he was found suffering from acute schizophrenia and his trial was separated from that of the co-accused on account of his said ailment. Obviously, these witnesses have no bearing whatsoever on the facts of the case. They are included in the list and are sought to be summoned only to protract the trial of the case.

8) How, the evidence of Mr.Gupta, the then A.D.M. and one Punjabi is relevant and essential for the just

decision of the case has neither been mentioned in the list nor shown at the time of arguments.

9) Request to summon Deenbandhu Choudhary, the then Chief Editor Dainik Navjyoti, Rajesh Sharma, Chief Editor Rashtradoot and Shri Bhairon Singh Shekhawat, the then Chief Minister has been made to prove certain newspaper reports and statements but neither these newspaper cuttings constitute substantive evidence in the case nor these newspaper reports and statements can be said to have any bearing on the defence of the accused. These newspaper reports and the statements published therein cannot in any way lead the court to any certain conclusion with regard to culpability or innocence of the accused. They can neither be read in his favour nor against him as they are based on hearsay evidence which is not admissible into evidence. The evidence of the persons who can give direct evidence about the facts and circumstances of the case is relevant and important and not newspaper reports. So, summoning of these witnesses is rightly declined by the learned court below.

10) Omendra Bhardwaj the then D.I.G. is reported to have made certain statements but a perusal of Exh.D-6 and Exh.D-7 makes it abundantly clear that these were made at the initial stage of the case. It appears that he had appealed to the public to come forward to make statements about the incident before the police. Therefore, this statement of the then D.I.G. is also of no relevance to the just decision of the case and the

learned court below has rightly declined to summon him as a defence witness.

11) Ahmed Chisty is sought to be produced to identify photographs of Aslam, Sagir and Javed published in Rashtradoot dated 26/5/1992. How, these photographs are relevant in respect of the petitioner has not been indicated and publication of photographs of others does not in any way either implicate the petitioner or absolve him. So, the learned court below has rightly declined his request to summon him.

12) Smt.Usha, the then Principal Savitry Sr.Higher Secondary School, Ajmer was cited as a prosecution witness but has not been produced in court. The list does not show as to what evidence she would give in the defence of the petitioner. So, no valid case for summoning her in defence is made out.

13) Shri Govind Narain Purohit, the then Additional S.P. Is alleged to have confirmed newspaper report dated 22/4/1992 and the sending of newspaper cuttings to the Investigating Officer. Likewise, Smt.Sudha Srivastava, the then Principal Savitri College is sought to be summoned to prove the attendance record of Madhubala during the academic session 1990-91. But, their such evidence has no material bearing on the case in hand.

14) Bhanwar Singh is a witness of recovery of the coloured phtographs. Madhubala is sought to be produced to prove the contents of the notices sent to the court by post in respect of Shilpi, Preeti, Bunti and Suneel.

Aditi Mehta, the then Divisional Commissioner, Ajmer and Digvijay Singh, the then Home Minister are also sought to be summoned in defence but it has not been mentioned as to how their evidence would be relevant to the defence of the accused-petitioner.

15) Jameel Ahmed, Advocate Kota is sought to be examined to prove the filing of a case against Rohit Mahajan, the then Additional S.P. under TADA for terrorising and harassing the ladies of the Muslim community of Kota and the vengeance exhibited by him against the Muslim community. These facts are unconnected with the present case. The case pertains to an occurrence which took place at Ajmer and not at Kota.

16) Thus, evidence of these witnesses being not in any way material and relevant for the just and fair decision of the case, the learned court below has rightly declined to summon them.

17) A bare look on the list of witnesses and considering the reasons mentioned therein for summoning them for examination as defence witnesses make it manifest that the evidence of all these witnesses is neither essential nor relevant for the just decision of the case. The application is found to be filed for the purpose of vexation and delay in the decision of the case. The learned court below has, therefore, rightly declined to summon these witnesses.

18) It is true as contended by the learned counsel for the petitioner that the learned court below has not

mentioned that the application has been filed for vexation or delay in the decision of the case but from the foregoing discussion, it is evident that the witnesses named in the list are sought to be summoned for examination only to delay the decision of the case. It is well settled that the application for summoning any witness or production of any document in defence may be refused under Section 233(3) Cr.P.C. on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. In the instant case, it is apparent from the discussions made above that the application has been made for the purpose of vexation or delay only and, therefore, such application could not have been allowed. Therefore, no fault can be found with the order of the court below.

19) The case is pending for final arguments since 8/10/2004. The statements of the accused-petitioner were recorded on 26/6/1997 and, thereafter, the case was fixed for his defence evidence.

19) That being so, I find no error, illegality or impropriety in the impugned-order so as to call for and justify interference of this Court in the said order in exercise of the limited revisional jurisdiction of this Court.

Consequently, this revision petition u/S.397 Cr.P.C. being devoid of merit and substance deserves to be and is hereby dismissed.

(HARBANS LAL), J.

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